

---

**UTAH LABOR COMMISSION**

**JOHNNY MARTIN,**

**Petitioner,**

**vs.**

**ENTERTAINMENT PARTNERS, INC.  
and AMERICAN CASUALTY CO. OF  
READING, PA.,**

**Respondents.**

**ORDER GRANTING  
MOTION FOR REVIEW  
AND MODIFYING ALJ'S  
DECISION**

**Case No. 05-0623**

---

Johnny Martin asks the Utah Labor Commission to review Administrative Law Judge Hann's denial of Mr. Martin's claim for temporary total disability benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Mr. Martin claims workers' compensation benefits from Entertainment Partners, Inc. and its insurance carrier, American Casualty Co. (referred to jointly as "Entertainment Partners"), for a work accident that occurred on October 8, 2001, causing injury to his left knee. Following an evidentiary hearing, Judge Hann appointed a medical panel and, after reviewing the panel's report, concluded that Mr. Martin's current left knee condition was caused by the work accident and he was entitled to reasonable medical treatment necessary to treat the injury, including surgery. However, Judge Hann denied Mr. Martin temporary total disability compensation after concluding he had reached medical stability.

Mr. Martin argues that the medical evidence demonstrates that he has not reached medical stability and he is entitled to temporary total disability compensation.

**FACTS**

The Commission adopts the facts set out in Judge Hann's decision to the extent consistent with this decision. The Commission also finds the following facts relevant to the issues presented in Mr. Martin's motion for review:

Mr. Martin worked for Entertainment Partners as a grip on a television production set. On October 8, 2001, Mr. Martin was injured when he fell backwards and the 60 pound box he had been carrying landed on his left knee. He was diagnosed with an acute injury that exacerbated long

**ORDER GRANTING MOTION FOR REVIEW/MODIFYING ALJ'S DECISION**  
**JOHNNY MARTIN**  
**PAGE 2 OF 5**

standing arthritic and instability symptoms in his left knee. From the time of this injury, Mr. Martin was regularly treated for his left knee injury, including multiple arthroscopic procedures and an ACL reconstruction, culminating in a recommendation for a total knee replacement.

On June 7, 2005, at Entertainment Partner's request, Dr. Marble examined Mr. Martin and confirmed that knee replacement surgery was necessary.<sup>1</sup> Dr. Marble's report observed that Mr. Martin "has an antalgic gait with advanced arthritic changes of the knee requiring part time use of a cane or crutch" that, prior to the surgery, qualifies him for a 15% whole person impairment. Dr. Marble continued that depending on the success of the surgery, Mr. Martin could qualify for a permanent whole person impairment rating between 15% to 30%.

The last medical report available was from Mr. Martin's surgeon, Dr. Nathan Momberger, dated on or about June 22, 2005. Although absent from Judge Hann's recitation of the facts, the report confirmed that Mr. Martin had not returned to work since the injury and later continued:

I have no expectation that short of a knee replacement surgery the patient would ever be able to be involved in meaningful work . . . prior to the surgery there is not much I think that should or can be done at this point. . . Specifically I have told him that I do not feel like he should go back long term, working as a grip, although I think this will be physically possible for him, I think he needs to look into more sedentary type of work. (Emphasis added.)

The medical panel examined Mr. Martin on January 13, 2006 and also concluded that knee replacement surgery as the only recourse. The panel's observations of Mr. Martin at that time were that he walks with a Lofstand crutch, is unable to walk more than several hundred paces, and he requires time-release morphine, Zolof, and Ambien. The panel also stated "[f]ollowing 8 October 2001, there is no point in which the treating physicians indicate that the petitioner's condition as a result of the industrial injury had resolved."

**DISCUSSION AND CONCLUSION OF LAW**

The central issue in Mr. Martin's motion for review is whether his left knee condition entitles him to temporary total disability compensation. Section 34A-2-410 of the Utah Workers' Compensation Act provides temporary total disability compensation "so long as the disability is total." This statutory provision has been applied in light of two decisions by the Utah Supreme Court. In Entwistle Co. v. Wilkins, 626 P.2d 495, 497 (Utah 1981), the Court held that an injured worker's temporary disability "may be found to be total if he can no longer perform the duties of the character required in his occupation prior to his injury." In Booms v. Rapp, 720 P.2d 1363, 1366

---

<sup>1</sup> Although Dr. Marble concluded that knee surgery was necessary, he did not believe the knee condition was caused by the work accident. Dr. Marble opined that the injury from the work accident actually reached medical stability within one month of the work accident.

**ORDER GRANTING MOTION FOR REVIEW/MODIFYING ALJ'S DECISION**  
**JOHNNY MARTIN**  
**PAGE 3 OF 5**

(Utah 1986), the Court ruled that “once a claimant reaches medical stabilization, the claimant is moved from temporary to permanent status and he is no longer eligible for temporary benefits.”

The Commission finds that the evidence shows Mr. Martin was totally disabled after the accident on October 8, 2001. In his position as a grip, Mr. Martin's duties included moving and setting up lighting for the production set and transporting the equipment from one location to another. However, since the injury, Mr. Martin requires the use of a crutch or cane for walking at least part-time, and he can only walk for short distances. It can be fairly concluded that Mr. Martin “can no longer perform the duties of the character required in his occupation prior to his injury” and that he is temporarily totally disabled.

The Commission also finds that Mr. Martin has not reached medical stability. To the contrary, none of the physicians opined that his left knee had reached medical stability or that his healing period had ended. The medical panel also recognized this in their report. Further, based on the panel's observations of Mr. Martin's condition in their evaluation, it can be concluded that Mr. Martin has not reached medical stability—nor could he reach stability—until he has the knee replacement surgery.

For the foregoing reasons, the Commission finds that Mr. Martin is entitled to receive temporary total disability compensation from the date of the injury on October 8, 2001, until he is deemed medically stabilized following his left knee replacement surgery.

**ORDER**

The Commission grants Mr. Martin's motion for review and modifies the order on Judge Hann's decision of March 22, 2006, by adding the following as a second paragraph to the order:

Entertainment Partners, Inc. and American Casualty Co. of Reading, PA. shall pay Mr. Martin temporary total disability compensation at the rate of \$554.00 per week from the date of his injury on October 8, 2001, until he is deemed medically stable. Respondents will recommence payment of temporary total disability compensation beginning July 2, 2005, when it ceased paying benefits, and ending when he reaches medical stability following his left knee replacement surgery. Any past due amount accrued is due and payable in a lump sum, together with interest thereon at 8% per annum.

**ORDER GRANTING MOTION FOR REVIEW/MODIFYING ALJ'S DECISION  
JOHNNY MARTIN  
PAGE 4 OF 5**

The remainder of Judge Hann's order remains in effect. It is so ordered.

Dated this 23<sup>rd</sup> day of April, 2008.

---

Sherrie Hayashi  
Utah Labor Commissioner

**NOTICE OF APPEAL RIGHTS**

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.